

SENT BY FAX AND MAIL

June 14, 2001

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, Massachusetts

RE: Competitive Market Initiatives

Dear Secretary Cottrell:

On May 31, 2001, the Department of Telecommunications and Energy ("Department") held a Technical Session at which it invited participants to identify remaining barriers to competitive supplier entry into the electricity market and to suggest measures to overcome those barriers. Tr. at 8. In addition, the Department indicated that it would continue to receive written comments on the issues raised at the session. The Attorney General submits this letter as his Comments concerning the issues raised at the Technical Session.

As the Department correctly noted at the Technical Session, competitive choice has lagged. Competitive suppliers today serve less than one percent of electricity customers, and approximately five percent of the load of Massachusetts companies, while default service customers currently represent approximately 25 percent of customers and 22 percent of the electric load. We must be willing to try new approaches to develop the competitive market and ensure that consumers receive the intended benefits from Electric Utility Restructuring. Both NSTAR Electric Company ("NSTAR") and Massachusetts Electric Company ("MECo") have identified proactive measures designed to bring customers and competitive suppliers together. The Department should immediately adopt these measures, subject to the restrictions set forth below.

NSTAR and MECo outlined pilot programs through which they plan to match potential customers and potential suppliers ("Matchmaker Programs"). Tr. at 15, 16, 17, 22, 23 and MECo Letter, May 30, 2001, Att. 1 and 2. They have proposed similar programs that would provide marketers with customer specific data for certain default service Commercial and Industrial customers. The MECo plan has two basic components: providing customer data to

suppliers, and identifying suppliers to customers.<sup>1</sup> The NSTAR program would provide default service customer data to suppliers and would notify the customer if a specific supplier expresses interest in providing service. Tr. at 15, 16, 17, 22, 23 and MECo Letter, May 30, 2001, Att. 1 and 2.

The Attorney General supports Department approval of the MECo and NSTAR pilot programs, but is concerned about two issues raised during the technical session: (1) the confidentiality of customer information; and (2) the potential for anti-competitive behavior if a distribution company has a competitive energy affiliate.

## **I. CUSTOMER CONFIDENTIALITY CONCERNS**

During the discussion of the Matchmaker programs, each speaker addressed the issue of confidentiality of customer information. NSTAR stated that customer confidentiality concerns led them to propose to provide information about the company's 200 largest default customers on an anonymous basis. MECo stated that it intends to select the customers and provide their data to pre-screened suppliers.

While Matchmaker programs may provide opportunities for both customers and suppliers, the rights and obligations of distribution companies to their customers remain unaltered. The Attorney General strongly recommends that the Department condition the approval of any pilot program in which customer information is shared between a distribution company and any third party supplier on the requirement that a customer provide informed consent to release information.<sup>2</sup> The release should provide the customer with the opportunity to select, through a check-off, the specific information that may be released, e.g. name and address only, phone number, load data, credit designation, type of offer sought, account number, meter number, other accounts in or out of a service territory, gas service. See Tr, at 51.

## **II. AFFILIATE RELATIONSHIPS**

Although it does not appear to be an issue for either NSTAR or MECo, the Department

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<sup>1</sup> MECo's proposed Default Service Initiative envisions using the Company's existing communications channels with customers (including customer service and business services referrals, speakers bureaus and trade shows, bill messages and stuffers and the web) to facilitate communication between suppliers and customers. Initially, the Company expects to provide the customer data free of charge, but anticipates associating a cost with that information in the future.

<sup>2</sup> G.L. c. 214, § 1 (B), establishes a general right to privacy for persons in the Commonwealth, and any matching program that includes the dissemination of customer credit information subjects the parties to the consumer reporting requirements of G.L. c. 93. Prior to Electric Restructuring customers enjoyed a reasonable expectation that their proprietary information would be confidential and would not be used for a commercial purpose. Since the Act did not create an exception to change that expectation, a customer still enjoys the expectation of privacy with regard to his/her information.

must carefully scrutinize Matchmaker programs or similar programs from Western Massachusetts Electric Company (“WMECo”) and Fitchburg Gas & Electric Light Company (“FG&E”) because they have unregulated competitive affiliates. Until recommends adopting a market-based solution, such as its affiliate Usource (Tr. at 31), which brings customers to the Enermetrix Exchange and matches customers and suppliers through a blind auction process. WMECo is scheduling a forum to bring customers and suppliers together in one room.

Third party suppliers must be treated on an equal and transparent basis as a company’s competitive affiliates. WMECo’s approach would be appropriate if third party suppliers were given the same access to customers as Select Energy. However, the Until proposal raises concerns. Until proposes that Usource, the company’s energy brokerage business, function as a broker to bring FG&E customers to the Enermetrix exchange, an entity in which Until has a financial interest.<sup>3</sup> (Tr. at 30, 31, 32). Although the auction is conducted through a blind process, the Department must assure that an unregulated subsidiary does not gain a competitive advantage based on information shared with it by its regulated subsidiary.

A distribution company should not be suggesting a company’s competitive affiliate as a supplier unless the Department conditions their approval on terms that are consistent with the provisions of the Standards of Conduct, 220 C.M.R. § 12.03. The Standards of Conduct require a separation between a distribution company and a competitive energy affiliate. The separation protects against anti-competitive behavior and requires that the Department make specific findings in order to grant an exemption.<sup>4</sup> The Attorney General recommends that the Department make findings consistent with the requirements of 220 C.M.R. § 12.03 prior to the approval of any “Until type” matchmaking program to ensure a level playing field. It is necessary to ferret out and head off any potential for anti-competitive behavior that may happen as a result of the Department’s attempt to jumpstart the competitive process.

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<sup>3</sup> See [http://www.energyagent.com/corp/comp\\_welcome.asp](http://www.energyagent.com/corp/comp_welcome.asp)

<sup>4</sup> The Department may approve an exemption from the separation requirements if the distribution company shows that [it] would (1) be in the best interests of the ratepayers, (2) have minimal anticompetitive effect, and (3) allow the costs of sharing ... to be fully and accurately allocated between the distribution company and the competitive affiliate. 220 C.M.R. § 12.03(17), *Fitchburg Gas and Electric Light Company*, D.T.E. 97-115/98-120, p. 10 (1999).

The Attorney General thanks the Department for conducting the technical session and for allowing him the opportunity to submit initial comments on Competitive Market Issues.<sup>5</sup>

Sincerely,

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Judith E. Laster  
Assistant Attorneys General

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<sup>5</sup> The Attorney General reserves the right to submit additional comments in response the comments of other parties to the extent necessary to assist the Department in its deliberations, *i.e.*, to provide further information, to correct misstatements or misinterpretations, or to provide omitted context.